IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/12/2003

CORAM

THE HONOURABLE MR. JUSTICE S. ASHOK KUMAR

Crl.R.C.NO. 1717 OF 2003
and
Crl.M.P.NO.11167 OF 2003

1. Fr. John Joseph,
S/o. Ravel

2. Sandanarajan,
S/o. Paranjothi

3. Maria John,
S/o. Davidsion ..... Petitioners /Accused 1 to 3

-Vs-

The State of Tamiil Nadu,
Rep. by Inspector of Police,
Kuzhithurai,
Kanyakumari District. ..... Respondent / Complainant

Petition filed under Sections 397 and 401 of Criminal Procedure Code against the order passed by the Sessions Judge, Kanyakumari division at Nagercoil in Crl.M.P.No.2837 of 2003 in S.C.No.25 of 1998 dated 2 0.9.2003.

!For Petitioners : Mr.V. Selvaraj

^For Respondent : Mr.I. Subramanian
Public Prosecutor
Assisted by
Mr.M.K. Subramanian
Govt. Advocate (Crl.Side)

:O R D E R

Accused 1 to 3 in S.C.No.25 of 1998, on the file of the District Sessions Judge, Kanyakumari District at Nagerocil, have filed this Revision against the order passed by the learned District Judge in Crl.M. P.No.2837 of 2003 dated 20.9.2003

2. The petitioners have filed Crl.M.P.No.2837 of 2003 under Section

91 Cr.P.C. to summon the 161(3) Cr.P.C. statements of the witnesses examined in Cr.No.2 of 2002 and the final report in the said case from the Additional Director General of Police, CBCID, Chennai for cross-examining the witnesses.

3. The fourth accused in the above said case, preferred Crl.R.C.No.1 510 of 2003 against the order passed in Crl.M.P.No.2103/2003 filed under Section 91 Cr.P.C. before this Court and this Court dismissed the same on the ground that the documents purported are only to the harassment said to have been meted out to the accused for the period between 4.9.1997 and 6.9.1997 and the murder is said to have taken place in the year 1995, and therefore, the so called documents pertaining to the harassment will not in any way be helpful to the accused. Relying upon the said order of this Court, the learned District Judge has negatived the prayer of the accused for sending of the documents.

4. Charges framed against all the accused have been sent for by this Court. A perusal of the charges framed would show that charges 11 to 15 relate to the occurrence said to have taken place on 5.9.1997 at 11.00 AM based on which charges under Sections 147, 148, 450, 364 and 506(2) IPC have been framed. If really the accused were taken to custody on 4.9.1997 by the officers, who are accused in Cr.No.2 of 200 2, on the file of CBCID, Tirunelveli, is true, the occurrence alleged to have taken place on 5.9.1997 at 11.00 AM should have been false, and therefore, the accused would be entitled to prove that the alleged occurrence said to have taken place on 5.9.1997 based on which the very F.I.R. was lodged is false. In that context, the statement of witnesses examined in Cr.No.2 of 2002 assume importance. It is pertinent to note that in Cr.No.2 of 2002, on the file of CBCID, Tirunelveli Division, investigation had been over and even sanction of the Government was obtained. But, as subsequent development, the Honourable First Bench in Writ Appeal Nos.3128 to 3130, 3214 and 3215 of 2002 has ordered fresh investigation based on the telegraphic complaint of one Ms. Anjela Rajan.

5. Learned Public Prosecutor submits that a clarification petition filed in the above writ appeals had also been recently dismissed on 25 .11.2003 except with a modification that instead of obtaining necessary sanction from the Government under Section 197 of the Code of Criminal Procedure, be in accordance with law. But the fact remains that further investigation has to be conducted on the telegram given by Ms. Anjela Rajan to the Honourable the Chief Justice of India and the Honourable the Chief Justice of High Court, Madras and the Chairman, Human Rights Commission. However, it is a fact that except a similar complaint on similar allegation, investigation was already over and sanction was already accorded. Therefore, the statement of witnesses so examined in Cr.No.2 of 2002, on the file of CBCID, Tirunelveli, relating to the alleged occurrence of arrest and torture of the petitioners from 4.9.1997 onwards will be a relevant fact to disprove the charges 11 to 15 now framed against the petitioners.

6. Learned Public Prosecutor also submits that if necessary the petitioners can be permitted to cross-examine the witnesses already examined

only to the extent of the arrest alleged on 3.9.1997 and the occurrence said to have taken place on 5.9.1997, that is, with regard to charges 11 to 15.

7. It is open to the petitioners to cross-examine such of those witnesses, who have deposed about the incidents alleged to have taken place on 5.9.1997 by contradictory statement, if any, with regard to arrest on 4.9.1997/5.9.1997 found in Cr.No.2 of 2002. With this observation, this Revision Petition is allowed and the learned District Judge is directed to give an opportunity for sending for the documents in Cr.No.2 of 2002, on the file of CBCID, Tirunelveli division and permit the petitioners to cross-examine on the question of the alleged arrest on 4.9.1997 or 5.9.1997 and incidents narrated in charges 11 to 15. Learned District Judge is directed to dispose of the case as expeditiously as possible.

8. To the extent indicated above, the Revision is allowed. Consequently, Crl.M.P.No.11167 is closed.

Index : Yes
Internet: Yes

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To

1. The Principal Sessions Judge, Kanyakumari District at Nagercoil.

2. The Inspector of Police, Kuzhithurai, Kanyakumari District.

3. The Public Prosecutor, High Court, Madras 104.

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